kind be used (*United States* v. *Winslow*, 227 U. S. 202), or to use the device only at the licensee's place of business (*Rubber Co.* v. *Goodyear*, 9 Wall. 788), or to use on condition that the product of the device should not be sold below a certain price (*Bement* v. *National Harrow Co.*, 186 U. S. 70), or to use for a limited time only (*Mitchell* v. *Hawley*, 16 Wall. 544). Permission to use only with certain films, seems to be an absolute analogy. It has been held, also, that one who voluntarily or otherwise pays full damages for having unauthorizedly made, used or sold a chattel embodying a patented invention does not thereby acquire any right to continued use or enjoyment of the chattel, nor is his vendee thereof in any better position. *Birdsell* v. *Shaliol*, 112 U. S. 485. And this is despite the fact that the one so precluded from enjoyment is in all other respects the "owner" of the particular thing.

These restrictions have been enforced as though they were unreleased restrictions of the patent law, and not as limitations originally imposed by one individual upon another. This is the ground on which the decision was expressly based, in the English case of *Incandescent Gas Light Co.* v. *Cantelo*, 12 Rep. Pat. Cas. 262. "The patentee," said that court, "has the sole right of using and selling the articles, and he may prevent anybody from dealing with them at all. Inasmuch as he has the right to prevent people from using them or dealing in them at all, he has the right to do the lesser thing, that is to say, to impose his own conditions." In accord are, *British Mutoscope & Biograph Co.* v. *Homer*, [1901], 1 Ch. Div. 671; *National Phonograph Co.* v. *Menck*, [1911], A. C. 336. All of this authority is completely in accord with the holding of *Henry* v. *Dick Co.*, which cites still other precedents.

When one recognizes the restriction of use in the *Motion Picture Patents* case for what it really is, namely, a limited release of a *statutory* restriction, and is not misled by its mere form of expression, the decision in the case is clearly in conflict with both logic and precedent. The court admits itself to have been influenced by a feeling that the restriction, if sustained, "would be gravely injurious to that public interest, which we have seen is more a favorite of the law than is the promotion of private fortunes." The fault however, if any, is with the Patent Statute which imposed the restriction, rather than with the patentee who relieved the public, at least to some extent, from its rigorous and absolute prohibitions. J. B. W.

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DUE PROCESS OF LAW AND THE REGULATION OF HOURS OF LABOR.—§2 of Chapter 102, Oregon Laws of 1913, provides: "No person shall be employed in any mill, factory, or manufacturing establishment in this State more than ten hours in any one day, except watchmen and employes when engaged in making necessary repairs, or in cases of emergency, where life or property is in immiment danger; provided, however, employes may work overtime not to exceed three hours in any one day, conditioned that payment be made for such overtime at the rate of time and one-half of the regular wage." The plaintiff in error was found guilty of causing one of his employes to work for thirteen hours in one day, the employe not being within the excepted conditions and not being paid the rate prescribed for overtime. The United

States Supreme Court upheld the conviction, holding that the statute is consonant with the Fourteenth Amendment. *Bunting* v. *Oregon,* 37 Sup. Ct. 435.

The plaintiff in error's conviction had been upheld by the Supreme Court of Oregon. *Bunting* v. *Oregon,* 71 Ore. 259. The appeal raised two questions: "(1) Is the law a wage law, or an hour of service law? And (2) if the latter, has it equality of operation?" The contention of plaintiff in error was that this was a law regulating wages, the argument being as follows: The employer is prohibited from working the employe more than thirteen hours a day, and thus in respect to thirteen hours it may be said to be a regulation of the hours of labor; but where the employe works more than ten hours a day, the employer must pay him at the rate of one and a half times the market price for such overtime. The wrong complained of is the failure of plaintiff in error to pay for such overtime at the increased rate provided for by statute; if the conviction of plaintiff in error is affirmed, it will result in compelling employers to pay one and one-half times the market rate for labor above ten hours per day. The majority of the court, however, considered that the statement in §1 of the statute, to the effect that the purpose was to guard the health of the laborer, must be respected. The explanation of the state court as to the higher rate of compensation for overtime was adopted: "Apparently the provisions permitting labor for the overtime on express conditions were made in order to facilitate the enforcement of the law, and in the nature of a mild penalty for employing one not more than three hours overtime." Therefore, the court did not find it necessary to determine what its decision would be if it had been of the opinion that this was in fact a regulation of wages. The opinion in the *Adamson Law* case (*Wilson* v. *New,* 37 Sup. Ct. 298), is not referred to, nor are such leading cases as *Holden v. Hardy,* 169 U. S. 366, 42 L. ed. 780, 18 Sup. Ct. 383; *Lochner* v. *New York,* 198 U. S. 45, 49 L. ed. 937, 25 Sup. Ct. 539, 3 Ann. Cas. 1133; *Muller* v. *Oregon,* 208 U. S. 412, 52 L. ed. 551, 28 Sup. Ct. 324, 13 Ann. Cas. 957. This failure to cite cases, however, is in line with the realization that each case involving the regulation of labor must be decided on facts and figures, not on theories and precedents. Each case is a new problem. Yet it is evident that the court is no longer willing to stand by its opinion in the *Lochner* case, where the prohibition was against employment in bakeries for more than ten hours a day. A new modus operandi for determining the constitutionality of such statutes has been adopted. No longer is the question of whether or not the trade is so unhealthy as to necessitate the regulation of its hours weighed in the scale of "common understanding" as in the *Lochner* case; but, beginning with *Muller* v. *Oregon,* counsel have seen the wisdom of furnishing the court with scientific data and opinions by experts upon the question as to the proper number of working hours in various industries. Mr. LOUIS D. BRANDEIS in the preparation of the *Muller* case made a radical step in the art of advocacy when he refrained from citing numerous decided cases as precedents for his contentions, but rather quoted from the reports of over ninety committees, bureaus of statistics, commissioners of hygiene, etc., to the effect that long hours were

injurious to the health of employes. The decisions in those cases argued on this basis speak loudly for the effectiveness and wisdom of this method of advocacy. In *People* v. *Schweinler Press,* 214 N. Y. 395, 410, 108 N. E. 639, overruling *People* v. *Williams,* 189 N. Y. 131, 81 N. E. 778, the court states that when the previous case was decided it did not have the benefit of scientific data on the subject, and now that it has before it the result of research as to the proper hours for labor, it is prepared to reach an opposite conclusion from that expressed in the prior case. Is it too much to say that the *Lochner* case would have been differently decided had the court been properly presented with scientific data bearing on the unhealthfulness of more than ten hours labor per day in bakeries?

As the court regarded the law as one regulating the hours of service and not wages, it had no difficulty in disposing of the second ground of appeal, i. e., that the law violates the "equal protection" clause of the fourteenth amendment in that it makes the employer in a mill, factory, or manufacturing establishment pay more for labor than other employers are required to pay. But the court having reached the determination that the effect of the law was not to regulate wages, an argument based on that assumption must fall along with its premise. Regarding the law as a regulation of hours of labor, there is sufficient basis for the classification adopted by the legislature.

It is worthy to note that the Chief Justice, Justice VAN DEVANTER and Justice MCREYNOLDS dissented. As no dissenting opinion was published, the reviewer refrains from attempting to state the exact grounds of their dissent. Justice BRANDEIS, having been interested in the preparation of brief for the defendant in error, took no part in the consideration or the decision. The brief filed by the defendant in error is voluminous and exhaustive, apparently all the scientific data and opinion on the question of the disadvantages of long hours of labor having been set forth. See also 18 YALE L. JOURNAL 454; 29 HARV. L. REV. 353; 15 MICH L. REV. 259. W. L. O.

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THE MATERIALMAN'S LIEN AND THE TITLE OF THE TRUSTEE IN BANKRUPTCY. —§47a(2) of the BANKRUPTCY ACT as amended in 1910, gives the trustee the rights of lien creditors over property in the custody of or coming into the custody of the bankruptcy court, and of judgment creditors holding an execution duly returned unsatisfied over property not in the court's custody. Despite this section, the New York Court of Appeals decided in the recent case of *Gates* v. *Stevens Construction Co.,* 115 N. E. 22, that a materialman who had furnished materials to a bankrupt prior to the filing of the petition and adjudication, and who had filed notice of his lien after such adjudication but within the statutory period is entitled to his lien, and that the trustee in bankruptcy, in taking title to moneys due to the bankrupt, takes title subject to the materialman's lien.

In New York and in most, if not all, of the states, the materialman, by filing notice within the statutory time, perfects his equitable lien, which begins in inchoate form when the first material is furnished. A general assignee for the benefit of creditors, having no greater right than the assignor